

FILED
DISTRICT COURT OF GUAM

MAR 27 2006 *hbo*

MARY L.M. MORAN
CLERK OF COURT

VAN DE VELD SHIMIZU CANTO & FISHER
De La Corte Building, Suite 101
167 East Marine Corps Drive
Hagåtña, Guam 96910
Tel.: 671.472.1131
Fax: 671.472.2886

Attorneys for Defendant: BRIAN WILLIAM ELM

UNITED STATES DISTRICT COURT
DISTRICT OF GUAM

UNITED STATES OF AMERICA)	Criminal Case No. CR-05-00053
)	
Plaintiff,)	
)	
vs.)	DECLARATION OF CURTIS C.
)	VAN DE VELD IN SUPPORT OF
CHRISTOPHER M. ESPINOSA,)	ORAL MOTION TO CONTINUE
JONATHAN E. CANOVAS, and)	TRIAL
BRIAN WILLIAM ELM,)	
)	
Defendants.)	

COMES NOW Curtis C. Van de veld, Esq., court appointed counsel for defendant BRIAN WILLIAM ELM to state under penalty of perjury the following facts in support of Defendant's oral motion to enlarge time for trial:

1. Since the date set for the trial on the Third Superseding Indictment, counsel for defendant has received an order from Designated District Judge Ricardo S. Martinez in Civil Case No. CIV04-00049, vacating the civil trial of that matter and consolidating the case with District Court of Guam Civil Case No. CIV04-00038 and CIV04-00006, for pretrial purposes and ordering the parties of all cases to engage in mediation within thirty days to be held before a mutually agreeable mediator, Judge William J. Cahill (Ret. District Court Judge) of

ORIGINAL

1 JAMS Neutrals. The mediation must be completed and a status report submitted to Judge
2 Martinez by no later than April 20, 2006. Because of the urgency of completing the
3 mediation, Judge Cahill has moved his schedule to accommodate the holding of the mediation
4 on April 6th through the 8th of 2006. This firm's involvement in these cases has been ongoing
5 for approximately two years, and trial was scheduled for April 3, 2006. At the time of
6 scheduling the continuation of the trial, defendant's counsel expected the trial dates would be
7 vacated based on the circumstances in that matter. Defense Counsel's firm has invested
8 almost the equivalent of two full time attorneys to matters in those cases for the last two years
9 and the matter involves significant and complex legal issues. Defendant's counsel is the
10 primary member of the firm to handle the mediation in conjunction with our out-of
11 jurisdiction co-counsel who specialize in class actions while the undersigned has significant
12 knowledge in both the areas of the tax issues and class-action. The financial impact upon the
13 firm of defendant's counsel is such that the inability to attend and participate in the mediation
14 would impose a great burden on the firm requiring counsel to withdraw from representation if
15 the case is not continued.
16

17 2. Defense counsel filed several motions in the last month that have tolled the
18 clock on the speedy trial act, including motions for non-legal assistance and to sever trial.
19 Defense counsel has not been able to investigate the knowledge of government witnesses
20 Albert Mendiola and Paul Mendiola and only recently received an order for issuance of
21 subpoenas. Further time is necessary to adequately prepare for the defense of this case. The
22 case involves substantial documents, exceeding one thousand pages of discovery.
23

24 3. Due to co-defendant Espinosa's counsel having been in a civil trial and then
25 leaving for medical treatment while the undersigned having been scheduled to commence a

1 criminal trial in Superior Court of Guam (which appears to have resolved based on a plea
2 agreement negotiated on the day set for jury selection), Defense counsel for both Defendants
3 have not had an opportunity to meet and confer in preparation for trial to avoid problems that
4 may arise to the detriment of the defendants at trial.

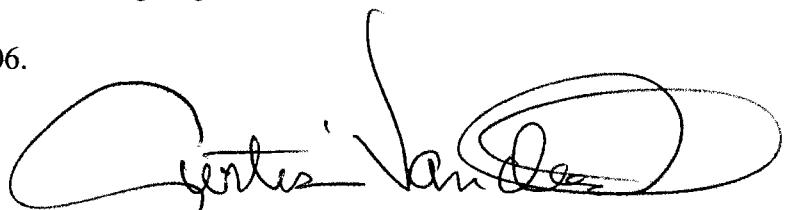
5 4. Defense counsel has been granted the assistance of an investigator and has
6 attempted to engage the assistance of investigator Greg Hall, but due to his hectic work
7 schedule, Mr. Hall has been very busy and unable to meet. Defense counsel believes that the
8 investigatory work can be completed if an additional thirty (30) days is provided.

9 5. Defendant Brian Elm faces the significant mandatory minimum of twenty (20)
10 years confinement if convicted. The government's case is based on both circumstantial
11 evidence and the testimony of drug dealer codefendants, and the successful representation of
12 Defendant Brian Elm requires coordinated and complete preparation.

13 6. Defense counsel believes that the ends of justice require that the trial of this
14 matter be continued to early May 2006 to allow time for adequate preparation and for counsel
15 to complete the other tasks ordered by the court. Alternatively, counsel will be forced to
16 withdraw.

17 I swear and affirm that the foregoing is true and correct to the best of my knowledge
18 this Monday, March 27, 2006.

19
20
21
22
23
24
25



Curtis C. Van de veld, Esq.
Court Appointed Defense Counsel for Defendant
BRIAN WILLIAM ELM

CCV:jwr
VSC:PBW ELM CR00053